

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

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|---|---|--|
| KIMBERLY PERRY, Administrator of<br>the Estate of Kenneth Perry,<br>deceased,                             | : | APPEAL NO. C-160496<br>TRIAL NO. A-1407169 |
|   | : |  |
| Plaintiff-Appellant,  | : | <i>JUDGMENT ENTRY.</i>                     |
|   | : |  |
| vs.   | : |  |
|   | : |  |
| DRAKE CENTER, INC., n.k.a.<br>DANIEL DRAKE CENTER FOR<br>POST-ACUTE CARE, LLC,                            | : |  |
|   | : |  |
| and   | : |  |
|   | : |  |
| DRAKE CENTER THE<br>REHABILITATION SPECIALIST,<br>n.k.a. DANIEL DRAKE CENTER FOR<br>POST-ACUTE CARE, LLC, | : |  |
|   | : |  |
| Defendants-Appellees,   | : |  |
|   | : |  |
| and   | : |  |
|   | : |  |
| MERRILL J. SHIDLER, M.D.,   | : |  |
|   | : |  |
| Defendant.  | : |  |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Kimberly Perry, as the administrator of the estate of her deceased husband Kenneth Perry (“Kenneth”), has appealed from the trial court’s

entry granting a directed verdict to defendants-appellees Drake Center, Inc., and Drake Center The Rehabilitation Specialist (collectively referred to as “Drake”) on Perry’s claims in a wrongful-death action.

Perry originally filed a wrongful-death action in the case numbered A-1104836, but dismissed that action prior to trial. She later refiled her claims against Drake and defendant Merrill J. Shidler, M.D., in the current action. Perry’s claims concerned the death of her husband Kenneth. Kenneth had undergone surgery for an aortic aneurysm and was admitted to Drake on June 5, 2009, for post-surgical care. Dr. Shidler was Kenneth’s primary-care physician from the time of his admission to Drake until he was transferred to Drake’s transitional-care unit on June 16, 2009. Dr. Shidler was not an employee of Drake.

On June 20, 2009, Kenneth was transferred from Drake to Mercy Hospital because he was experiencing respiratory distress. He passed away on June 21, 2009, after suffering a pulmonary embolism.

Perry’s claims against Drake and Dr. Shidler were tried before a jury. Perry presented expert testimony from Dr. Vinod Malhotra. Dr. Malhotra opined that Kenneth’s death had been caused by a pulmonary embolism, and that the embolism was related to Dr. Shidler’s failure to regularly administer heparin to Kenneth while he was being treated at Drake. When Dr. Malhotra was asked if he had any opinions regarding Drake’s care of Kenneth, counsel for Drake objected. Counsel argued that Dr. Malhotra could not offer any opinions pertaining to Drake because, in his deposition taken in the case numbered A-1104836, Dr. Malhotra had failed to offer any criticisms of Drake and had only been critical of Dr. Shidler’s failure to administer heparin. The trial court sustained Drake’s objection. Drake later moved for a directed verdict on the ground that Perry failed to offer any expert testimony

that Drake breached the standard of care or caused injury to Kenneth. The trial court granted Drake's motion for a directed verdict.

In her sole assignment of error, Perry argues that the trial court erred in granting Drake's motion for a directed verdict. Under Civ.R. 50, a trial court must grant a motion for a directed verdict when, after viewing all evidence in the light most favorable to the nonmovant, reasonable minds could only reach one conclusion upon the evidence submitted, and that conclusion is adverse to the nonmovant. Civ.R. 50(A)(4); *Bennett v. Admr., Ohio Bur. of Workers' Comp.*, 134 Ohio St.3d 329, 2012-Ohio-5639, 982 N.E.2d 666, ¶ 14. Because a motion for a directed verdict presents a question of law, we review the trial court's ruling de novo. *Bennett* at ¶ 14.

In this case, Perry's expert offered no testimony that Drake had breached a relevant standard of care or had caused injury to Kenneth. In the absence of such expert testimony, the trial court properly granted a directed verdict to Drake. *See Bruni v. Tatsumi*, 46 Ohio St.2d 127, 131-132, 346 N.E.2d 673 (1976); *Hughes v. Bethesda Hosp., Inc.*, 1st Dist. Hamilton No. C-040567, 2005-Ohio-2451, ¶ 9.

Perry argues that, even in the absence of expert testimony pertaining to Drake's duty of care, Drake is liable for the negligence of Dr. Shidler under an agency-by-estoppel theory. Drake did not address this argument in its appellate brief.

Under the doctrine of agency by estoppel, a hospital may be held liable for the negligence of independent medical practitioners working in the hospital when "it holds itself out to the public as a provider of medical services; and (2) in the absence of notice and knowledge to the contrary, the patient looks to the hospital as opposed to the individual practitioner to provide competent medical care." *Fetters v. St. Francis/St. George Hosp., Inc.*, 1st Dist. Hamilton No. C-990410, 2000 WL 282372,

\*5 (Mar. 17, 2000), quoting *Clark v. Southview Hosp. and Family Health Ctr.*, 68 Ohio St.3d 435, 628 N.E.2d 46 (1994), syllabus. The record provided to this court contains no evidence that Kenneth looked to Drake, rather than Dr. Shidler, to provide competent medical care. In the absence of such evidence, reasonable minds could only conclude that Drake was not vicariously liable for Dr. Shidler's negligence, and we find that the trial court did not err in granting Drake's motion for a directed verdict.

Perry's assignment of error is overruled, and the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**MOCK, P.J., CUNNINGHAM and MYERS, JJ.**

To the clerk:

Enter upon the journal of the court on March 15, 2017  
per order of the court \_\_\_\_\_.  
Presiding Judge